

Avery Samet  
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April 29, 2019

**VIA ECF AND EMAIL - Bernstein.chambers@nysb.uscourts.gov**

The Honorable Stuart M. Bernstein  
United States Bankruptcy Court for the Southern District of New York  
One Bowling Green, Courtroom 723  
New York, New York 10004

**Re: Joint Pretrial Stipulation for *LaMonica v. Tilton, et al.*,  
Adv. Pro. No. 18-1021**

Dear Judge Bernstein:

We represent the Plaintiff in the above-referenced adversary proceeding. We write to seek the Court's assistance with procuring Defendants' comments to the joint pretrial stipulation.

Pursuant to the Court's April 3, 2019 Order [Doc. No. 73], as well as the Court's ruling at the March 28, 2019 conference, the joint pretrial stipulation must be submitted by Friday, May 3, 2019.

We provided Defendants with our 56-page draft stipulation (including a separate list of trial exhibits) on April 4, 2019. After several written requests, Defendants committed to provide comments by last Friday.<sup>1</sup> To date, they have not done so.

Cognizant of the Court's requirements with respect to pretrial orders, we are concerned Defendants have not left sufficient time to work out a proper pretrial order by May 3<sup>rd</sup>. Furthermore, as we have agreed to a mediation on Thursday, May 2, 2019 (a date chosen at Defendants' insistence), we have one less day of work to complete the stipulation this week. Without seeing Defendants' proposed additions or changes we are unable to gage what may be involved, but it would certainly appear that insufficient time is left for the pretrial order to present a meaningful statement of agreed upon facts, or to make a good faith effort to resolve objections over each side's proposed documents.

We request that Defendants be ordered to submit their proposed submission promptly.

Respectfully submitted,

/s Avery Samet

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<sup>1</sup> Attached is Defendants' April 17, 2019 email committing to provide comments and responding to the chain of emails requesting the same.

**Gili Karev**

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**From:** Mervis, Michael T. <MMervis@proskauer.com>  
**Sent:** Wednesday, April 17, 2019 1:18 PM  
**To:** Avery Samet; Karcher, Timothy Q.; Tillem, Marissa  
**Cc:** Bijan Amini; Jaime Leggett  
**Subject:** RE: Draft Pre-Trial Stipulation

Avery – Thank you for your message. We do have some prior experience here with pretrial orders and are mindful of the timing. We expect to share our version with you next week.

**Michael T. Mervis**  
Member of the Firm

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**From:** Avery Samet <asamet@storchamini.com>  
**Sent:** Wednesday, April 17, 2019 11:32 AM  
**To:** Karcher, Timothy Q. <tkarcher@proskauer.com>; Mervis, Michael T. <MMervis@proskauer.com>; Tillem, Marissa <mtillem@proskauer.com>  
**Cc:** Bijan Amini <bamini@storchamini.com>; Jaime Leggett <jleggett@storchamini.com>  
**Subject:** RE: Draft Pre-Trial Stipulation

Tim, Michael and Marissa:

Can we please get a response as to when we can expect to receive your comments to the pre-trial stipulation? On April 4, we suggested that you provide them by April 18 and requested that you let us know by April 8. We followed up again on April 9. We need a schedule so we can arrange to respond to your draft quickly. This is an iterative and cooperative process, so please keep us in the loop and let us know what your plan is as soon as possible.

Thanks and regards,

**Avery Samet**

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**From:** Avery Samet

**Sent:** Tuesday, April 9, 2019 10:01 PM

**To:** Karcher, Timothy Q. <[tkarcher@proskauer.com](mailto:tkarcher@proskauer.com)>; Mervis, Michael T. <[mmervis@proskauer.com](mailto:mmervis@proskauer.com)>; Tillem, Marissa <[mtillem@proskauer.com](mailto:mtillem@proskauer.com)>

**Cc:** Bijan Amini <[bamini@storchamini.com](mailto:bamini@storchamini.com)>; Jaime Leggett <[jleggett@storchamini.com](mailto:jleggett@storchamini.com)>

**Subject:** RE: Draft Pre-Trial Stipulation

Tim, Michael and Marissa:

As agreed, attached are our initial draft deposition designations. This can be inserted at the end of section VIII. As we discussed, you will let us know if you won't be bringing Mr. Pelissier to the trial and we are not designating his testimony at this point.

Please get back to us on when you intend to provide us with your comments to our pre-trial stipulation drafts.

Regards,

**Avery Samet**

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**From:** Avery Samet

**Sent:** Thursday, April 4, 2019 9:49 PM

**To:** Karcher, Timothy Q. <[tkarcher@proskauer.com](mailto:tkarcher@proskauer.com)>; Mervis, Michael T. <[mmervis@proskauer.com](mailto:mmervis@proskauer.com)>; Tillem, Marissa <[mtillem@proskauer.com](mailto:mtillem@proskauer.com)>

**Cc:** Bijan Amini <[bamini@storchamini.com](mailto:bamini@storchamini.com)>; Jaime Leggett <[jleggett@storchamini.com](mailto:jleggett@storchamini.com)>

**Subject:** Draft Pre-Trial Stipulation

Tim, Michael and Marissa:

As agreed, attached is our initial draft of the joint-pre trial stipulation. Obviously, this is an iterative process and each side reserves the rights to supplement or amend as we work through it. I will send the initial draft of the joint exhibit list momentarily by separate email.

Working backwards, it seems to us that we ought to schedule a joint in-person session on May 1 to finalize it, in order to do so, we'd like your commitment to return this draft with your initial insertions and comments by a date certain and no later than April 18. We need to clear our schedule to respond to your comments, so we would appreciate if you would let us know tomorrow or Monday when when we can expect them.

Regards,

Avery Samet

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